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10 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 ROBERT RUNDO et al.,

17 Defendants.
18

No. CR 18-759(A)-CJC

GOVERNMENT'S OPPOSITION TO
DEFENDANT'S EX PARTE APPLICATION
TO MODIFY PRETRIAL SCHEDULE

19 Plaintiff United States of America, by and through its counsel
20 of record, the United States Attorney for the Central District of
21 California and Assistant United States Attorneys Solomon Kim and
22 Kathrynne N. Seiden, hereby files its Opposition to Defendant's Ex
23 Parte Application to Modify Pretrial Schedule (Dkt. 257).
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1 This opposition is based upon the attached memorandum of points
2 and authorities, the files and records in this case, and such further
3 evidence and argument as the Court may permit.

4 DATED: September 13, 2023

5 E. MARTIN ESTRADA
6 United States Attorney

7 CAMERON L. SCHROEDER
8 Assistant United States Attorney
 Chief, National Security Division

9 /s/
10 _____
 SOLOMON KIM
11 KATHRYNNE N. SEIDEN
 Assistant United States Attorneys

12 Attorneys for Plaintiff
13 UNITED STATES OF AMERICA

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Counsel have represented defendant Robert Rundo ("Rundo") in
3 this case for the past five years and have been on notice of the
4 current briefing schedule for over seven months. Now, three and a
5 half weeks before their deadline to file pretrial motions, counsel
6 seek additional time to prepare them. Counsel's proposed method of
7 accomplishing this is not to request a trial continuance, but to ask
8 the Court to slash the government's time to respond to three separate
9 defendants' pretrial motions -- including motions to dismiss, motions
10 to suppress, and motions in limine -- from three weeks to just nine
11 days. The government does not oppose modifying the briefing schedule
12 with respect to motions in limine, but respectfully submits that nine
13 days is insufficient to adequately respond to case dispositive
14 motions filed on behalf of three separate defendants in a way that
15 could meaningfully assist the Court in ruling on those motions.

16 Moreover, defense counsel's justification for the requested
17 modification stems from a conflict that affects only one of the two
18 DFPDs assigned to the case and which arises from her own making. If
19 defense counsel feel that they need more time to adequately prepare
20 for trial, they can and should seek a continuance of the existing
21 trial date, rather than force the Court to rule on case dispositive
22 motions that have not received adequate time for briefing. The
23 government therefore respectfully requests that the Court grant the
24 modification with respect to motions in limine, but deny the request
25 with respect to any motions to dismiss or motions to suppress.

26 **I. BACKGROUND**

27 DFPD Deixler has represented defendant since October 2018, when
28 he made his initial appearance in this case. (Dkt. 12.) Although

1 the Court dismissed the indictment in June 2019, the Ninth Circuit
2 reversed and remanded two and a half years ago, in March 2021. (Dkt.
3 145). The Ninth Circuit's mandate issued in February 2022, at which
4 point the Court reopened the case. (Dkts. 161-62.) Eight months
5 ago, in January 2023, defendants were charged by superseding
6 indictment for the same conduct underlying the 2018 indictment.
7 (Dkt. 209.) In February, the Court continued the trial date to
8 December 12, 2023 and set a briefing schedule that gave the parties
9 until October 5, 2023 to file pretrial motions. (Dkt. 219.) The
10 Court allocated three weeks for the parties to respond to pretrial
11 motions, setting the deadline to October 26, 2023. (Id.) The Court
12 also set a motion hearing date for November 16, 2023. (Id.)

13 Defendant was arrested and appeared on the superseding
14 indictment on August 2, 2023. (Dkt. 251.) On August 16, 2023,
15 roughly four months before the current trial date and seven weeks
16 before the deadline for pretrial motions, DFPD Deixler notified the
17 Court and the parties that defendant did not wish to continue trial
18 and would be proceeding as scheduled. Nearly two weeks after
19 defendant's initial appearance, on August 17, 2023, DFPD Murphy
20 joined DFPD Deixler as counsel of record for defendant. (Dkt. 256.)

21 Now, a month after counsel provided notice that they would be
22 proceeding on the current trial date, they request that the Court
23 extend the deadline to file pretrial motions by nearly two weeks, to
24 October 17, 2023, giving defense counsel five weeks from now -- or
25 nine weeks in total from the time they knew they would be proceeding
26 on the current trial date -- to prepare and file their motions.
27 Defense counsel further request that the Court cut the government's
28 time to respond to pretrial motions from 21 days to just nine. In

1 other words, counsel suggest that the Court simply reallocate to them
2 two weeks from the government's time to respond. Counsel also
3 propose moving the motions hearing to the week of Thanksgiving,
4 thereby leaving three weeks over a holiday between a decision on any
5 potential dispositive motion filed by defendants and the actual trial
6 date.

7 **II. THE COURT SHOULD DENY DEFENDANT'S APPLICATION**

8 The Court should deny the ex parte application or, in the
9 alternative, grant it only with respect to motions in limine. There
10 is no good cause to modify the pretrial briefing schedule. Doing so
11 will hinder the government from providing adequate briefing to the
12 Court on potentially case-dispositive motions and result in a
13 significant waste of resources.

14 The parties previously proposed, and the Court granted, a
15 briefing schedule which accounts for the time necessary to allow the
16 parties time to respond to substantive pretrial motions, such as
17 motions to suppress or motions to dismiss on complex constitutional
18 grounds. Under counsel's proposed modification, the government will
19 have nine days to respond not only to motions in limine from three
20 defendants, but also to motions to dismiss, motions to suppress, or
21 motions challenging Rundo's extradition, all of which counsel
22 suggests she may file.¹ (See Dkt. 257 ¶ 11.) Nine days is simply
23 not sufficient to respond meaningfully to that volume of substantive
24 motions. Nor is three weeks over a holiday sufficient time between a
25 case dispositive hearing and trial to subpoena and prepare witnesses
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27
28 ¹ Counsel for another defendant has also notified the government
that he intends to file several pretrial motions, including a motion
to dismiss.

1 -- some who will be traveling from out-of-district to testify about
2 conduct which occurred in 2018 -- and to otherwise prepare for trial.
3 Accordingly, the government will be forced to substantially prepare
4 for a trial in advance of a potentially case-dispositive ruling,
5 potentially resulting in a significant waste of resources.

6 Moreover, the sole basis for DFPD Murphy's request is that her
7 colleague, who has represented defendant for the past five years, is
8 currently unable to assist in this case, including in the filing of
9 pretrial motions, because she is preparing for an upcoming trial in
10 another case, United States v. Boylan, No. 22-482-GW, which is set
11 for October 24, 2023. Boylan is represented by at least three highly
12 experienced DFPDs, including DFPD Deixler. (See Boylan, Dkt. 62 at
13 8.) The DFPDs have requested six continuances of the trial date in
14 that matter. (Id. at 3.) In an ex parte application to continue the
15 trial date filed in May 2023, the DFPDs requested that the trial in
16 Boylan be continued to September 26, 2023, representing that the
17 trial would last two to three weeks (i.e., through October 10, 2023).
18 (See Boylan, Dkt. 51.) At the time of the application, the current
19 pretrial briefing schedule in this matter had already been set by the
20 Court. (See Dkt. 220.) DFPD Deixler nonetheless requested a trial
21 date of September 26, 2023 in Boylan, knowing that she would be in
22 the middle of a two-to-three-week trial in Boylan while motions were
23 simultaneously due in this case. In fact, DFPD Deixler specifically
24 referenced the upcoming trial in this case as one of the bases for
25 the ex parte request to continue the trial in Boylan. (Boylan, Dkt,
26 51 at 3-4.)

27 In short, the government does not wish to unreasonably burden
28 defense counsel with respect to the preparation of pretrial motions

1 and has offered to continue the trial date so that counsel have more
2 time to file their motions. But a conflict which defense counsel not
3 only knew about, but arguably created, and which applies only to one
4 of defendant's two attorneys, does not constitute good cause to cut
5 the government's time to respond to motions in half. That is
6 particularly so given that it is defendant who insists on proceeding
7 to trial on the current date.

8 **III. CONCLUSION**

9 For the foregoing reasons, the government respectfully requests
10 that the Court deny defendant's ex parte application to amend its
11 previous order or, in the alternative, grant defendant's application
12 with respect to motions in limine, only.